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*Attorneys for Defendant/Counter-Plaintiff*  
*Brian Kabala*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

LHF PRODUCTIONS, INC., a Nevada  
Corporation,

Plaintiff,

vs.

AGUSTIN BERTOLIN, an individual; MARIA  
GONZALEZ, an individual; BRIAN KABALA,  
an individual; JOHN KOEHLI, an individual;  
DANIEL O'CONNELL, an individual;  
DONALD PLAIN, an individual; DAVID  
POOR, an individual; ANTE SODA, an  
individual; MATTHEW STEWART, an  
individual; AARON TAKAHASHI, an  
individual; and JOHN AND JANE DOES, 1-10,

Defendants.

CASE NO. 2:16-cv-02028

**COUNTER-PLAINTIFF BRIAN  
KABALA'S MOTION FOR  
EXTENSION OF TIME TO AMEND  
COUNTERCLAIM, MOTION FOR  
LEAVE TO FILE SECOND  
AMENDED COUNTERCLAIM, AND  
MOTION TO STAY EXISTING  
DISCOVERY DEADLINES**

**(FIRST REQUEST)**

Defendant/Counter-Plaintiff, Brian, Kabala, an individual, by and through recently –  
retained counsel Kolesar & Leatham and prospective Pro Hac Vice counsel Lisa L. Clay,

Attorney at Law, makes the following requests pursuant to Federal Rule of Civil Procedure 15, and Nevada LR IA 6-1 and LR 26-4, and in support of said requests, states as follows:

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

1. On August 26, 2016, Plaintiff LHF Productions Inc. (“LHF”) represented by Attorney Charles C Rainey, filed a form complaint naming 23 “John Does” as defendants, along with a form Motion for Leave to take Limited Discovery (i.e. subpoena an ISP for the identity of the unknown Does). (ECF Nos. 1 and 3.)

2. On November 22, 2016 Plaintiff amended its complaint and named ten defendants by name, including Brian Kabala. (ECF No. 7.)

3. On March 13, 2017, Brian Kabala, appearing pro se, filed an answer to the amended complaint, eleven affirmative defenses, a counterclaim requesting a declaration of non-infringement, a counterclaim for abuse of process, and referenced Rule 11 sanctions in his requests for relief. (ECF No. 22.)

4. LHF filed a Motion to Dismiss Kabala’s counterclaims on March 27, 2017. (ECF No. 28) to which Kabala filed a response on April 10, 2017. (ECF No. 32.)

5. On April 27, 2017, the Court issued a rule to show cause “in writing why the Court should not (1) sever all defendants except the first defendant in each case (2) dismiss the remaining defendants without prejudice, and (3) quash any subpoenas for discovery to the extent they pertain to any defendants other than the first named defendant. (ECF No. 33.)

6. On April 27, 2017 the Court issued a rule to show cause asking LHF to file a declaration “whether the Rule 26(f) conference was held as required and, if so, why a discovery plan has not been filed.” (ECF No. 34.)

7. On May 1, 2017 pursuant to the discovery plan, Kabala served his First Set of Requests for Admissions on LHF. (See Declaration of Brian Kabala in Support of Motion and Brief to Deem Facts Admitted, ECF No. 73-5, ¶2.) He served a Second Set of Requests for Admission on June 16, 2017 (ECF No. 73-19.)

1           8.       The Court severed and dismissed all defendants except for Brian Kabala by report  
2 and recommendation entered June 13, 2017. (ECF No. 61.)

3           9.       On July 18, 2017 LHF filed a motion pursuant to F.R.C.P. 41(a)(2) requesting the  
4 voluntary dismissal without prejudice of its complaint against Defendant Brian Kabala. (ECF  
5 No. 70).

6           10.      Kabala first attempted to obtain counsel on or about July 31, 2017. (See  
7 Declaration of Lisa L. Clay, ("Clay Dec.") attached hereto as Exhibit 1, ¶ 2.)

8           11.      The Court granted LHF's Motion to voluntarily dismiss on July 26, 2017, and  
9 ordered Kabala to "advise the court whether he intends to proceed with his counterclaims." (ECF  
10 No. 72.)

11          12.      On July 27, 2017 Kabala filed a Motion to Deem facts admitted pursuant to Rule  
12 36. (ECF No. 74.) The Court granted the Motion on August 15, 2017. (ECF No. 80.)

13          13.      Kabala filed a motion to extend both the discovery and dispositive motion  
14 deadlines on August 28, 2017 (ECF No. 82) which the Court granted on October 13, 2017. (ECF  
15 No. 88.)

16          14.      Kabala again spoke with Attorney Clay on October 28, 2017 about representing  
17 him. Attorney Clay explained that because she is not licensed in Nevada her ability to assist him  
18 was contingent on her ability to find local counsel. (Clay Dec. Ex. 1, ¶ 2.) (Kabala Dec. Ex. 2).

19          15.      Attorney Clay had difficulty locating local counsel, and did not obtain a  
20 commitment from Attorney Jonathon Blum to act as local counsel until Monday, November 13,  
21 2017. (Clay Dec., Ex 1., ¶¶ 4, 5.)

22          16.      Attorney Clay will need significant time to review the existing record, research  
23 and recommend revisions and possible additions to Kabala's existing counterclaims, and  
24 familiarize herself with the Local Rules. Defendant requests an extension of time up to and  
25 including January 20, 2018 to amend Kabala's counterclaims.

26          17.      Pursuant to LR IA 6-1, the undersigned represents that this is the first motion for  
27 extension of this deadline, and that the reason for the request relates to new counsel's need for  
28 time to familiarize herself with the facts and legal arguments at issue herein.

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1           18. Pursuant to LR 26-4, the undersigned represents that the retention of new counsel  
2 by a previously pro se litigant should qualify as a showing of good cause for the extension. The  
3 undersigned further represents that counsel was unable to make this request more than 21 days  
4 before the current deadline of November 14, 2017 as requested in LR 26-4 because local counsel  
5 was not retained until today.

6           19. In support of his Motion for Stay of Discovery, Attorney Clay can make no  
7 substantive representations about the status of discovery because she has not yet had time to  
8 review served discovery in details, but it is her understanding and belief that no substantive  
9 responses to Kabala's discovery requests have been obtained, and that motion practice by  
10 counsel will likely be necessary to obtain same; that no depositions have been noticed or taken,  
11 and that Kabala's amended counterclaims will require new written discovery.

12           20. Out of an abundance of caution, and in light of Local Rules regarding extensions  
13 and amendments, Defendant will file an Amended Counterclaim on the existing due date,  
14 November 14, 2017. Defendant Kabala respectfully suggests that his new counsel should be  
15 granted leave to amend same, pursuant to Fed. R. Civ. P. 15, which states that leave to amend is  
16 to be "freely given when justice so requires." *Id.* This Court has held that "amendment should  
17 be allowed with 'extreme liberality,'" particularly where, as here, there is no showing of "undue  
18 delay, bad faith, dilatory motive, undue prejudice or futility of amendment." *Goodwin v. Exec.*  
19 *Trustee Servs., LLC*, 680 F.Supp2d 1244, 1257 (D. Nev. 2010) (citations omitted).

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1 WHEREFORE, Defendant Brian Kabala, through newly-retained counsel, respectfully  
2 requests (1) An extension of time up to and including January 20, 2018 to file his amended  
3 counterclaim; (2) a stay of the existing discovery deadlines pending review of the amended  
4 counterclaims, whereupon the Parties can attempt to negotiate an appropriate extension of the  
5 discovery deadlines.

6 DATED this 13 day of November, 2017.

7 **KOLESAR & LEATHAM**

8  
9 By

JONATHAN D. BLUM, ESQ.

Nevada Bar No. 009515

ERIC D. WALTHER, ESQ.

Nevada Bar No. 13611

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Kolesar & Leatham and that on the <sup>OK</sup>13 day of November, 2017, I caused to be served a true and correct copy **COUNTER-PLAINTIFF BRIAN KABALA'S MOTION FOR EXTENSION OF TIME TO AMEND COUNTERCLAIM (FIRST REQUEST), MOTION FOR LEAVE TO FILE SECOND AMENDED COUNTERCLAIM, AND MOTION TO STAY EXISTING DISCOVERY DEADLINES** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule 5-4 of the Local Rules of Civil Practice of the United States District Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities.

  
An Employee of KOLESAR & LEATHAM

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# EXHIBIT 1

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*Attorneys for Defendant/Counter-Plaintiff*  
*Brian Kabala*

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**DISTRICT OF NEVADA**

\* \* \*

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Plaintiff,

vs.

AGUSTIN BERTOLIN, an individual; MARIA  
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an individual; JOHN KOEHLI, an individual;  
DANIEL O'CONNELL, an individual;  
DONALD PLAIN, an individual; DAVID  
POOR, an individual; ANTE SODA, an  
individual; MATTHEW STEWART, an  
individual; AARON TAKAHASHI, an  
individual; and JOHN AND JANE DOES, 1-10,

Defendants.

CASE NO. 2:16-cv-02028

**DECLARATION OF BRIAN T.  
KABALA IN SUPPORT OF  
COUNTER-PLAINTIFF BRIAN  
KABALA'S MOTION FOR  
EXTENSION OF TIME TO AMEND  
COUNTERCLAIM (FIRST  
REQUEST), MOTION FOR LEAVE  
TO FILE SECOND AMENDED  
COUNTERCLAIM, AND MOTION  
TO STAY EXISTING DISCOVERY  
DEADLINES**

I, BRIAN KABALA, declare that:

1. I am the Defendant/Counter-Plaintiff in the above-referenced matter. I make these  
statements upon my personal knowledge of the facts stated herein.



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2. I first reached out to Attorney Lisa Clay about potential representation on July 31, 2017. She was unable to provide representation at that time.

3. I reached out to Attorney Clay again on October 28, 2017. She explained that she would only be able to assist me if she could find local counsel willing to sponsor a pro hac vice application.

4. I made one last attempt to settle this matter with Attorney Rainey on November 8 and 9, 2017. I explained to him that there were only two options: we needed to settle or I needed to retain counsel. Attorney Rainey refused my proposed terms and instead threatened me with refile of the previously-dismissed suit and appellate practice.

5. I spoke with Attorney Clay and local counsel about retaining them on Friday, November 10, but Attorney Blum did not yet have authority to be retained by me.

6. My new counsel will need significant time to review the existing records. Attorney Clay has advised me that she is a solo practitioner who does not practice in Nevada.

7. Pursuant to LR 26-4, I respectfully suggest that retention of new counsel should qualify as a showing of good cause for the extension. I further represent that I was unable to make this request more than 21 days before the deadline as requested in LR 26-4 because I was actively seeking to retain counsel and was unsuccessful in doing so until today.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 13<sup>th</sup> day of November, 2017.

/s/ Brian Kabala  
**BRIAN KABALA**

# EXHIBIT 2

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-and-

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*Attorneys for Defendant/Counter-Plaintiff*  
*Brian Kabala*

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**DISTRICT OF NEVADA**

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vs.

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GONZALEZ, an individual; BRIAN KABALA,  
an individual; JOHN KOEHLI, an individual;  
DANIEL O'CONNELL, an individual;  
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individual; MATTHEW STEWART, an  
individual; AARON TAKAHASHI, an  
individual; and JOHN AND JANE DOES, 1-10,

Defendants.

CASE NO. 2:16-cv-02028

**DECLARATION OF LISA L. CLAY,  
ESQ. IN SUPPORT OF COUNTER-  
PLAINTIFF BRIAN KABALA'S  
MOTION FOR EXTENSION OF  
TIME TO AMEND  
COUNTERCLAIM (FIRST  
REQUEST), MOTION FOR LEAVE  
TO FILE SECOND AMENDED  
COUNTERCLAIM, AND MOTION  
TO STAY EXISTING DISCOVERY  
DEADLINES**

I, LISA L. CLAY, ESQ., declare that:

1. I am an attorney licensed in Illinois, Washington and Washington D.C. I have  
been practicing law since 2002. I am seeking to represent Defendant Brian Kabala pro hac vice

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1 in the above-referenced matter. I make these statements upon my personal knowledge of the  
2 facts stated herein.

3 2. I first spoke to Defendant Brian Kabala about potential representation on July 31,  
4 2017. I was unable to offer assistance at that time.

5 3. I spoke with Mr. Kabala again on October 28, 2017, and explained that a  
6 condition precedent to my ability to assist him was finding local counsel willing to sponsor a pro  
7 hac application and assist me with the litigation.

8 4. I made extensive efforts to locate counsel knowing of Mr. Kabala's impending  
9 amendment deadline, but to no avail.

10 5. I finally obtained a commitment from Attorney Jonathan Blum on Monday,  
11 November 13, 2017.

12 6. I will need significant time to review the existing record, research and recommend  
13 revisions and possible additions to Kabala's existing counterclaims, and familiarize myself with  
14 Local Rules.

15 7. As a solo practitioner, and given my existing case load and the upcoming  
16 holidays, I respectfully request until January 20, 2018 to file amended counterclaims.

17 8. Pursuant to LR 26-4, I respectfully suggest that retention of new counsel by a  
18 previously pro se litigant should qualify as a showing of good cause for the extension. I further  
19 represent that Defendant was unable to make this request more than 21 days before the deadline  
20 as requested in LR 26-4 because local counsel was not retained until November 13, 2017.

21 9. Although I have not had a chance to review served discovery closely, and will  
22 need time to do so, it is my understanding that no substantive responses to Mr. Kabala's  
23 discovery requests have been obtained, and that motion practice will likely be necessary to  
24 obtain same; that no depositions have been noticed or taken, and that the amended counterclaims  
25 will require new written discovery.

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1 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is  
2 true and correct.

3 EXECUTED this 13<sup>th</sup> day of November, 2017.

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5 /s/ Lisa L. Clay, Esq.  
6 **LISA L. CLAY, ESQ**  
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